

Panaji, 1st July, 2005 (Ashada 10, 1927)

SERIES II No. 13

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 21-10-2004 in reference No. IT/25/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 22nd November, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/25/2002

Workmen rep. by,
The President,
C/o Anta R. Naik,
Goa Meat Complex Employees Welfare Union,
Bharmal,
Pale-Goa.

Workmen/Party I

V/s

The Managing Director,
M/s. Goa Meat Complex Ltd.,
Panaji-Goa.

Employer/Party II

Workmen/Party I-Represented by Adv. Shri A. Nigalye.

Employer/Party II-Represented by Adv. Shri P. A. Kamat.

Panaji, dated 21-10-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 1-4-2002 bearing No. 28/16/2002-LAB referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Goa Meat Complex in retrenching the following workpersons with effect from the dates as specified, against their respective names, in column (4) below, is legal and justified?"

Sr. No.	Name of the Employee	Designation	Date of re-trenchment
(1)	(2)	(3)	(4)
(1)	Shri Vithal Satardekar	Attendant	25-1-1998
(2)	Shri Pandhari Gawade	Driver	15-1-1998
(3)	Shri Vikas Banaulikar	Driver	15-1-1998
(4)	Shri Prashant Desai	L.D.C.	25-1-1998
(5)	Shri Rajendra Madgaonkar	Operator	25-1-1998
(6)	Shri Manoj Sawant	Computer Operator cum A/C Clerk	25-1-1998
(7)	Shri Dilip V. Khutkar	Driver	25-1-1998
(8)	Shri Cyril Almeida	Driver	25-1-1998
(9)	Shri Deepak Rayu Naik	Driver	15-1-1998

If not, to what relief the workpersons are entitled?"

2. On receipt of the reference a case was registered under No. IT/25/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "Workmen") filed statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workmen are that the Employer-Party II (for short, "Employer") owns and operates a factory known as Goa Meat Complex at Usgaon, Goa and

employs more than 100 workmen for the last more than 5 years and therefore Chapters V-A and V-B of the Industrial Disputes Act, 1947 applies to the employer. That the factory of the employer is governed by the Industrial Employment (Standing Orders) Act, 1946 and since the Standing Orders of the employer are not certified the Model Standing Orders were applicable when the workmen were employed in the factory of the employer. That more than one year after the date of the appointment, the workmen were issued letters purporting to be the offers appointing them on probation which had no legal force or effect as the workmen had acquired the statuses of permanent workmen. That the employer using the said illegal and inoperative letters terminated the services of the workmen with effect from the date mentioned in the order of reference against each workman. That the termination of service by the employer is illegal and arbitrary. That they were in continuous service for more than two years but full retrenchment compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947 was not paid to them and therefore their termination of service is void ab-initio. That no notice of retrenchment was served on the Government or the authority specified in that behalf. The workmen contended that no notice of 3 months was given to them nor wages in lieu of notice were paid to them before their retrenchment as prescribed in Sec. 25F and 25N which are the conditions precedent for valid retrenchment. The workmen contended that non compliance of the above sections renders the action of the employer ab-initio null and void. The workmen claimed that they are entitled to reinstatement in service with full back wages and all other benefits and privileges from the date of termination of their service as the action of the employer in terminating their services is illegal and unjustified.

3. The employer filed written statement at Exb. 6. The employer stated that this Tribunal has no jurisdiction to entertain and try the present dispute. The employer stated that the workmen in the present reference are not "workmen" as defined under the Industrial Disputes Act, 1947 nor it is an "Industry" within the meaning of Sec. 2(J) of the Industrial Disputes Act, 1947. The employer stated that the purported dispute is not an industrial dispute. The employer stated that the provisions of the Industrial Employment (Standing Orders) Act, 1946 are not applicable to the employer as it is not an industrial establishment. The employer stated that it is governed by the Central Civil Services Rules and not Industrial Disputes Act. The employer admitted that it owns and operates a factory known as Goa Meat Complex at Usgaon but denied that it employs 100 or more workmen in its factory. The employer stated that the workmen in the present reference were engaged on daily wages on temporary basis in order to cope up with the temporary exigencies of work of a purely temporary nature. The employer stated that the tentative offers of appointment were issued to the

workmen in anticipation of creating new post but there was no commitment to employ them on permanent basis. The employer denied that the workmen acquired the status of permanent workmen. The employer stated that the services of the workmen were terminated in view of the order of the Hon'ble High Court and after examining the issues involved the workmen were paid compensation in lieu of notice and for the completed work period. The employer denied that the workmen were entitled to retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947. The employer denied that any of the provisions of the Industrial Disputes Act, 1947 applied to the workmen in the present case. The employer denied that its action of terminating the services of the workmen is arbitrary and unreasonable or that it is in contravention of the provisions of law. The employer denied that the workmen are entitled to any relief as claimed by them.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workmen. The workmen were given several opportunities to lead evidence in the matter. In spite of the opportunities given no evidence came to be led on behalf of the workmen and ultimately on 28-7-2004 Adv. Shri Nigalye, the learned counsel for the workmen submitted that he is not leading any evidence on behalf of the workmen. Thereafter the case was fixed for recording evidence of the employer on 24-9-2004. On this date Adv. Shri P. A. Kamat, the learned Advocate for the employer filed an application on behalf of the employer Exb. 11, stating that the burden was on the workmen to prove their case and in the absence of any evidence from the workmen the reference is liable to be rejected. No evidence was also led on behalf of the employer.

5. The reference of the dispute was made by the Government at the instance of the workmen since they challenged the action of the employer of retrenching their services. It is the workmen who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which require the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour

Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

6. In the present case the dispute was raised by the workmen as regards retrenchment of their service by the employer which according to them is illegal and unjustified and since it was at their instance that the reference of the dispute was made by the Government, the burden was on the workmen to prove that the action of the employer in retrenching them from service was illegal and unjustified. The workmen were given sufficient opportunity to lead evidence but they failed to lead any evidence in the matter. The employer also has not led any evidence. Therefore, there is no material before me to hold that the action of the employer in retrenching the service of the workmen is illegal and unjustified. I, therefore, hold that the workmen have failed to prove that the action of the employer in retrenching them from the service is not legal and justified. The reference has to be answered against the workmen holding their retrenchment from service as legal and justified, and I hold so accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Goa Meat Complex in retrenching the workpersons mentioned in the order of reference with effect from the dates as specified, against their respective names, is legal and justified. I further hold that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 20-10-2004 in

reference No. IT/10/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 22nd November, 2004.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/10/2004

Mrs. Saroja Naik,
Rep. by Goa Trade & Commercial,
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. ... Workman/Party I

V/s

M/s. Waterways Shipyard P. Ltd.,
Chicalim-Goa. Employer/Party II

Applicant - represented by Adv. Shri Suhas Naik.

Opponent - represented by Adv. Shri P. Chaudikar.

Panaji, dated 20-10-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 19-1-2004 bearing No. 28/51/2003-LAB/63 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Water Ways Shipyard Pvt. Ltd., Chicalim-Goa, in refusing employment of Mrs. Saroja Naik, Labourer, with effect from 11-4-2003, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/10/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed her statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that she was employed with the Employer/Party II (for short, "Employer") as a labourer since the year 1991. That the Employer is engaged in the business of ship repair activities. That

the workman was paid salary of Rs. 1800/- per month and she was eligible for the benefits of ESI and she was marking her attendance on the attendance card which is in possession of the employer. That the employer refused employment to her from 11-4-2003 without assigning any justified reasons. That at the time of refusal of employment she was not paid retrenchment compensation and as such the action of the employer in refusing employment to her is illegal and unjustified. The workman claimed that she is entitled to reinstatement in service with full back wages and other consequential benefits.

3. After the claim statement was filed by the workman the case was fixed for filing of the written statement by the employer. The parties however submitted that they are trying to arrive at an amicable statement and at their request the case was fixed on 20-8-2004 for filing the terms of settlement. Accordingly, on the said date, the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 20th August, 2004 at Exb. 5. The parties prayed that award be passed in terms of the said settlement. I have gone through the terms of the settlement which are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 20th August, 2004.

ORDER

1. It is agreed between the parties that the Management of M/s. Waterways Shipyard Limited, (hereinafter referred to as Company) shall pay a sum of Rs. 45,000/- (Rupees forty five thousand only) to the Party I/Workman Mrs. Saroja Naik by way of an A/C payee cheque No. 792807 dated 20-8-2004 drawn on the United Western Bank Ltd., Vasco da Gama, Goa, towards full and final settlement of all her claims arising out of her employment/termination and claims arising out of the reference mentioned herein above.
2. Mrs. Saroja Naik shall accept the said amount of Rs. 45,000/- as stated hereinabove in the clause No. 1 in full and final settlement of all her claims arising out of her employment with the company, and shall acknowledge the said amount by way of receipt. Mrs. Saroja Naik further confirms that nothing further is due and payable to her by the Company which can be computed in terms of money, and this settlement satisfy all her claims of reference including her any claim of reinstatement and/or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 22-11-2004 in reference No. IT/135/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 9th December, 2004.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/135/99

Shri Pradeep Simepuruskar,
M/s. Kadamba Transport Corporation Ltd.,
Porvorim Depot,
Porvorim, Bardez-Goa. ... Workman/Party I

V/s

M/s. Kadamba Transport Corporation Ltd.,
Bus Terminus,
Panaji-Goa. Employer/Party II

Party I - Represented by Adv. Shri A. Kundaikar.

Party II - Represented by Adv. Shri P. M. Nimbalkar.

Panaji, dated 22-11-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13th December, 1999 bearing No. IRM/CON-MAP/(90)/97/6053 referred the following dispute for adjudication of this Tribunal.

"Whether the action of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa, in terminating the services of Shri Pradeep Simepuruskar, Helper Mechanic, with effect from 16-8-1997 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/135/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/

/Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed as a substitute helper mechanic vide order dated 26-2-91 and thereafter he was appointed on probation vide order dated 18-12-91. That he was charge sheeted vide charge sheet dated 28-6-94 alleging that he had assaulted the Security Assistant Shri Ramdas Bhagat on 21-6-94 causing injury to his right ear and that the said act constituted misconduct under clause 21 of the Certified Standing Orders. That a departmental enquiry was conducted against him and on completion of the enquiry the Inquiry Officer submitted his findings/report dated 16-6-97 holding him guilty of charges of misconduct. That on receipt of the said enquiry report a show cause notice was issued to him and thereafter he was dismissed from service vide dismissal order dated 16-8-97. The workman contended that the enquiry against him is not fair and proper and that it was conducted in violation of the principles of natural justice. The workman also contended that the findings given by the Inquiry Officer are perverse as they are contrary to the evidence on record. The workman contended that termination of his service by the employer w.e.f. 16-8-97 is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed the written statement at Exb. 6. The employer admitted that the workman was appointed as substitute helper mechanic on daily wages vide order dated 26-2-91 and subsequently was appointed on probation vide order dated 18-12-91. The employer denied that the service records of the workman reflected that he was honest and his service record was unblemished. The employer admitted that a charge sheet dated 28-6-94 was issued to the workman and a departmental enquiry was conducted against him. The employer denied that the enquiry was not conducted in a fair and proper manner or that it was conducted in violation of the principles of natural justice. The employer denied that the findings given by the Inquiry Officer are perverse or that they are contrary to the evidence on record. The employer stated that the services of the workman were terminated because he had committed gross misconduct. The employer denied that termination of service of the workman is illegal and unjustified or that the workman is entitled to reinstatement in service with full back wages as claimed by him. Thereafter the workman filed rejoinder at Exb. 7.

4. On the pleadings of the parties following issues were framed at Exb. 8.

1. Whether the Party I prove that the domestic enquiry held against him is not fair and proper?
2. Whether the charges of misconduct levelled against the Party I are proved to the

satisfaction of the Tribunal by acceptable evidence?

3. Whether the Party I proves that Termination of his services by the Party II w.e.f. 16-8-97 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

5. Since the issue Nos. 1 and 2 were relating to the enquiry conducted against the workman and proving of the charges of misconduct against him in the enquiry, the said issues were treated as preliminary issues and the parties led evidence on the said issues. By findings dated 7-12-2001 this tribunal held that the domestic enquiry held against the workman is fair and proper. This Tribunal further held that the workman is guilty of the charges leveled against him in the charge sheet dated 28-6-94 which are misconduct under clause 28 (VII), (XIII), (XXIII), (XXIV) and (Lii) of the certified Standing orders. Thus the issue Nos. 1 and 2 stood disposed of. Thereafter the workman as well as the employer were given opportunity to lead evidence on the remaining issues, namely the issue Nos. 3 and 4. The issue No. 3 pertained to whether the termination of the service of the workman by the employer with effect from 16-8-97 is illegal and unjustified and the issue No. 4 pertained to whether the workman is entitled to any relief.

6. My findings on the above said remaining issues are as follows.

Issue No. 3: In the negative.

Issue No. 4: In the negative.

Issue No. 5: As per order below.

REASONS

7. Issue No. 3: Advocate Shri Kundaikar, the learned counsel for the workman submitted that the charge sheet was issued to the workman by the depot manager. He submitted that the depot manager had no authority to issue the charge sheet as he is not the appointing authority and as such the charge sheet is illegal. He submitted that since the charge sheet itself is illegal there is no question of misconduct being proved against the workman. He relied upon the judgment of the Madras High Court in the case of V. Sankaran V/s Joint Director of School (Secondary) Education Madras and another reported in 1997 ICLR 364 and that of the Punjab and Hariyana High Court in the case of Harpal Singh V/s the Presiding Officer, Labour Court, Ambala, reported in 1994 Lab IC 1367. He submitted that the dismissal order is passed by the Managing Director and under the certified standing orders the appeal against the dismissal order lies to the Managing Director and as such the right of appeal is lost. In support of his this contention he relied upon the judgment of the Karnataka High Court in the case of M. Sachidanandar V/s Assistant General Manager (Disciplinary

Authority) Vijaya Bank Zonal Office, New Delhi & Ors. reported in 1998 II CLR 1225. He submitted that there is no evidence to show that the past service record of the workman was not good. He submitted that only the charge sheets are produced by the employer but in respect of the said charge sheets no enquiry was held nor any memo of warning was issued, and therefore the said charge sheets cannot be considered as bad service records of the workman. He submitted that the assault if at all was on the spur of the movement and not predetermined and as such the punishment of dismissal from service is highly disproportionate.

8. Advocate Shri Ninbalkar, the learned counsel for the employer submitted on the other hand that the assault was committed by the workman when the security personnel was on duty and was performing his official duty. He submitted that the cause for the assault was that the security personnel had told the workman that he cannot be allowed to work because he had attended late, which is a serious offence. He submitted that to maintain the discipline amongst the employees the punishment of termination service is justified. He submitted that after the charge sheets were issued no disciplinary proceedings were initiated because the employer wanted to give opportunity to the workman to improve. He submitted that the punishment of termination of service imposed on the workman is justified, as he was involved in committing assault on the staff member namely the security personnel. In support of his this contention he relied upon the judgment of the Bombay High Court in the case of Hindustan Petroleum Corp. Ltd., V/s Y. S. Chandhry & Anr. reported in 1997 ICLR 884.

9. Advocate Shri Kundaikar, the learned Counsel for the workman has raised the contention that the charge sheet dated 28-6-94 issued to the workman is signed by the Depot Manager Mr. A. Prabhu who was not the appointing officer of the workman and therefore the charge sheet itself is illegal. In fact this defence has been taken on behalf of the workman for the first time in the course of the arguments. There are no pleadings to this effect either in the claim statement or in the Rejoinder filed by the workman. The contention raised by Advocate Shri Kundaikar is a mixed question of fact and law, which requires evidence from the parties. In the absence of any pleading from the workman in this respect he cannot be allowed to raise the above contention now. It is well settled that a party cannot be taken by surprise. A party must have an opportunity to meet the contention of the opposite Party. On this ground alone the contention raised by Advocate Shri Kundaikar now is liable to be rejected. Even then, there is no substance in the above contention raised by Advocate Shri Kundaikar. The employer has its certified standing orders. The workmen as well as the employer are bound by the said certified standing orders, which are nothing but contract of service. Clause 29 C (i) of the certified standing orders lays

down that the manager or an officer of the corporation authorized in this behalf may institute an enquiry against workman before imposing on him any punishment. The first step for instituting an enquiry is the issuing of the charge sheet. Clause 2 of the certified standing orders deals with definitions. As per clause 2 (C) "Manager" means the General Manager or Depot Manager or the person for the time being managing the establishment and includes any other officers duly authorized to exercise powers of the manager such authorization being notified to the workmen by displaying it on the notice Boards of the establishments. Thus as per the above clause, depot manager is included in the definition of manager. Therefore, the depot manager Shri A. Prabhu had the authority to initiate enquiry against the workman and consequently to issue the charge sheet. Advocate Shri Kundaikar has relied upon the judgment of the Madras High Court in the case of V. Sankaran (supra) and that of the Punjab and Hariyana High Court in the case of Harpal Singh (supra). I have gone through both these judgments and I am of the view that the said judgments are not applicable to the issue involved. The Judgment of the Madras High Court in the case of V. Sankaran is on the point of Vitiating of the domestic enquiry on the principle of natural justice that no person shall be a judge in his own cause. In the present case it has been already held by me in my findings dated 7-12-2001 that the domestic enquiry held against the workman is fair and proper. The present issue before this Tribunal now is the legality and justifiability of the action the employer in terminating the services of the workman. That is, whether the punishment awarded to the workman is proper or not. Similarly in the case of Harpal Singh (supra) the issue involved is totally different. In this case the Punjab and Hariyana High Court has laid down that after holding that the domestic enquiry was properly held, the Tribunal has to still decide the case on merit that is whether the findings given by the enquiry officer are perverse or not. In the present case in my findings dated 7-12-2001 it has been already held by me that the findings given by the enquiry officer are not perverse and the misconducts alleged against the workman in the charge sheet are proved. Therefore both the above judgments relied upon by Advocate Shri Kundaikar are out of place and they have no bearing on the issue No. 3. In the circumstance, I hold that there is no substance in the contention of Advocate Shri Kundaikar that the Charge sheet issued to the workman is illegal.

10. The other contentions which are raised on behalf of the workman are that there is violation of the principles of natural justice because the workman has been denied the opportunity of preferring appeal against the termination order as the appellate authority and the authority who has passed the termination order is one and the same. As regards the contention of the workman that he has been

denied the opportunity of preferring appeal against the dismissal/Termination order I do not find any substance in this contention of the workman. In answer to the pleadings made in the claim statement, the employer stated in the written statement that the workman had preferred appeal against the dismissal order by application dated 16-9-97. The employer had stated in the written statement that the appellate authority is the Managing Director and not the joint Managing Director. The workman has filed rejoinder to the written statement. In his rejoinder the workman did not deny the above statements made by the employer in the written statement. The dismissal/termination order is passed by the joint Managing Director and therefore there is no substance in the contention of the workman that in his case the Appellate authority and the authority who passed the dismissal order is one and the same. Moreover, the workman did not deny in his rejoinder that he had preferred appeal against the dismissal order. Since in the case of the workman the dismissal authority was the joint Managing Director and the Appeal lay to the Managing Director, there is no violation of the principles of natural justice as contended by the workman. The Workman could have challenged the order of the appellate authority by filing writ petition in the High Court but he did not do so. Even otherwise, in the present proceedings the issue involved is whether the termination of the service of the workman is illegal and unjustified. It has nothing to do with the right of appeal against the termination order. The termination cannot be held to be illegal even if it is assumed that the right of appeal is denied to the workman as the remedies open to the workman are the two distinct remedies i.e., one under the Industrial Dispute Act, 1947 and the other under the certified standing orders.

11. While deciding the issued No. 2, it has been held by me that the charges of misconduct levelled against the workman in the charge sheet dated 28-6-94 are proved. As per the charge sheet the workman was charged for following misconducts under clause 28 of the certified standing orders.

- 28 (VIII) – Assaulting any person inside the premises or vehicles of the corporation.
- 28 (XIX) – Wilful insubordination or disobedience (Whether or not in Combination with another) of any lawful and reasonable order of a superior.
- 28 (XIX) – Late attendance on more than two occasions within the month.
- 28 (XX) – Habitual breach of any standing order or any law applicable to the establishment or any rules made thereunder.
- 28 (XXIV) – Commission of any act subversive of discipline or good behaviour on the premises or precincts of the establishment.

28 (XXiii) – Drunkenness, riotous, disorderly, indecent or improper behaviour on the premises of the establishment, or outside the premises of the establishment, if it adversely affects or is likely to affect the working or discipline of the establishment.

28 (Lii) – Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the corporation against the employees of the corporation, or any other person authorized to work in the corporation, and any such act outside premises of the corporation if it directly affects or is likely to affect the discipline or work or business of the corporation.

12. The charges which are held to be proved against the workman are that of questioning the Security Assistants Shri Gawas and Shri Bhagat by saying "Who are you to ask me?" and assaulting the security Assistant Shri Bhagat with a slap on the face near the right ear with left hand. The above acts were committed by the workman within the depot premises and when the security personnel were on duty. The act on the part of the workman of questioning the security assistants is held by me to be an improper act and an act subversive of discipline and good behaviour which is bound to affect adversely the discipline in the establishment and the said act also amounts to using impolite and insulting language to an employee. It has been held by me that the above act constitutes misconduct under clause 28 (Xxiii), (XXIV) and (Lii) of the certified standing order. It has been also held by me that the act on the part of the workman of assaulting security Asst. Shri Bhagat is an improper act and it is disorderly and indecent behaviour, besides being an act subversive of discipline and good behaviour which is bound to affect discipline in the establishment. I have held that the said act constitutes misconduct under clause 28 (VII), (XXII), and XXIV) of the certified standing orders of the employer.

13. Advocate Shri Kundaikar the learned Advocate for the workman has submitted that the punishment of termination of service awarded to the workman is not justified in the present case. He has submitted that the incident had occurred on the spur of the moment and there is no evidence to show that past service of the workman was not good. He has submitted that mere issuing of charge sheet does not prove that the past service record of the workman was not good as no enquiry was conducted against him in respect of the said charge sheets nor any warning letters, show cause notice were issued to him. The question whether the Tribunal has powers to interfere with the punishment awarded by the employer, is now well settled with the introduction of Section 11A to the Industrial Disputes Act, 1947. Section 11A of the said Act has now conferred powers

on the Industrial Tribunal to interfere with the punishment by the employer and award lesser punishment in the facts and circumstance of the case. In the case of Ramakant Misra V/s State of Uttar Pradesh and Others reported in 1983 SCC (L A S) 26, the Supreme Court has held that the Labour Court or the Tribunal has powers and Jurisdiction under Section 11A of the Industrial Disputes Act, 1947 to substitute its measure of punishment in place of that awarded by the employer once it is satisfied that order of dismissal or discharge was not justified in the facts and circumstances of the case.

14. In the present case the workman was employed with the employer, that is, Kadamba Transport Corporation as a helper mechanic. The employer is a public sector undertaking engaged in providing transport to the public at large. The incident of using impolite and insulting language to the employees of the employer namely the security Assistants and assaulting the security Asst. Shri Bhagat had taken place within the work place, that is within the depot premises. Advocate Shri Kundaikar, the learned Advocate for the workman has submitted that the incident had occurred on the spur of the moment. I do not agree with this contention of advocate Shri Kundaikar. The workman had entered the depot premises forcibly though the security Assistant Shri Bhagat tried to stop him because he had reported late for duties. The workman questioned his authority and went to the rest room. In the rest room when Shri Bhagat again told him that he will not allow him to work because the foreman had not permitted his late reporting for duty, the workman assaulted him on the right side of his ear. This is supported by medical report. In the above circumstances it cannot be said that the incident had occurred on the spur of the moment. The workman was bent upon defying the security Assistant. The other contention, which has been raised by Advocate Shri Kundaikar on behalf of the workman, is that there is no evidence to show that past service record of the workman was not good. He has contended that mere issuing of charge sheet does not prove that the past conduct of the workman was not good in the absence holding enquiry and issuing warning letter or Show Cause notice. The employer has produced the charge sheets dated 12-5-94, 20-8-92 and 25-6-97 at Exb. W-1 colly issued to the workman. The witness Shri Harmalkar has himself stated in his deposition that though charge sheets were issued, no enquiry was held against the workman because the employer wanted to give opportunity to the workman to improve himself. The workman in his cross-examination has admitted the receipt of the said charge sheets. However, mere issuing of a charge sheet is not enough. The charge sheet contains only the allegation made against the employee. The said allegations are required to be proved in an enquiry. Admittedly no enquiry was held against the workman in respect of the said charge sheets. Therefore in the absence of holding any enquiry against the workman or issuing him any

warning letter or Show Cause in respect of the said charge sheets it cannot be said that the past service record of the workman was not good. However, the Bombay High Court in the case of Sarabhai M. Chemicals (S. M. Chemicals and Electronics) limited, reported in 1980 I LL J 295 has held that it cannot be said that disciplinary proceedings for misconduct can never be taken against an employee on a charge of insubordination arising out of solitary instances of a lawful order and that for sustaining such a charge of insubordination several repeated instances of disobedience are necessary. It therefore follows that to punish an employee one solitary instance of misconduct is enough. The Bombay High Court in another case namely in the case of Chandrakant Patil V/s Union of India and others reported in 1995 II CLR 445 has held that the past service record is required to be considered as a mitigating circumstance but it is well settled that where the delinquent is guilty of serious misconduct then even one single misconduct like theft or connivance there in may warrant dismissal. The Bombay High Court in the case of Basu Deba Das V/s M. R. Bhope reported in 1993 II CLR 239 in Para 34 of its judgment has held that whether a particular misconduct is severe or otherwise would depend upon the facts of each particular case and no hard and fast rule can be laid down to gauge the serenity or the Triviality of misconduct. The High Court held that a misconduct which may not be viewed in certain cases to be serious but it can be serious in another set of circumstances and that a code of conduct which is expect of a workman Varies from place to place. In the case of New Sharrock Mills V/s Maheshbhai T. Rao reported in 1997 ICLR 13, the Supreme Court held that the Labour Court ought not to have interfered with the punishment awarded after having come to the conclusion that the findings of the departmental enquiry was legal and proper, the discharge order was not by way of victimization and that the respondent workman had seriously misbehaved and thus was guilty of misconduct. In the case of Inspecting Assistant Commissioner, Bombay, and Others V/s Sharat Narayan Parab reported in 1998 ICLR 186 the Supreme Court has held that unless the punishment imposed is such that no reasonable person could ever have imposed such a punishment looking to the circumstances of the case, the punishment imposed by the employer should not be interfered with. In the case of Municipal Corporation of Greater Bombay V/s S. E. Phadtare and Others reported in 1994 ICLR 301 in Para 16 of the Judgment the Supreme Court observed as follows:

"There is growing indiscipline amongst the workers controlled by the union and resort to violence is common. The workers controlled by some of the unions are under the impression that even if they indulge in violent activities and damage public property, Court will come to their rescue and permit them to continue their nefarious activities, such impression cannot be permitted to go around. High Court always takes

liberal view when the interest of employees are involved but the beneficially legislation cannot be allowed to stretch to such an extent as to make the mockery of discipline".

15. Advocate Shri Nimbalkar, the learned Advocate for the employer, has relied upon the judgment of the Bombay High Court in the case of Hindustan Petroleum Corporation Ltd., (supra). In this case the employee had tried to assault a customer of the employer with motorcyle chain. After holding domestics enquiry the employee was discharged from service. The Tribunal held that the discharge was disproportionate and unjustified and as such the discharge order was set aside. In writ petition the Hon'ble single Judge came to the conclusion that the employee was not entitled for reinstatement but ordered payment of back wages upto 15-12-94, that is, till the date the order was passed by the Hon'ble single Judge considering the pecuniary condition of the employee and the fact that the employer had not suffered loss as the consignment was ultimately delivered to the employee. The employer preferred appeal against the order of the Hon'ble single Judge. The Division Bench held that the employee had tried to assault the customer with motor-cycle chain for no fault of the customer, and that it was a serious circumstance particularly when the customer had not given any provocation to the employee, and the fault was of the employee in not delivering the goods as per the order of the employer. The Division Bench held that the entire conduct of the employee did not warrant any lenient view in the matter. The Division Bench set aside the order of the learned Hon'ble Judge and upheld the order of discharge issued by the employer company.

16. In my view the judgement of the Bombay High Court in the case of Hindustan Petroleum Cor. Ltd., (supra) squarely applies to the present case, and in view of the Law laid down by the Supreme Court and the Bombay High Court in the above referred cases, I do not find any reason to interfere with the punishment imposed by the employer, considering the nature of the misconduct committed by the Workman, the place where it was committed and the circumstances under which it was committed. The workman had attended the duties late and had forcibly entered the depot premises inspite of the objection from the security Assistants Shri Bhagat and Shri Gawas and he had challenged their authority to question him by saying "who are you to ask me?". Thereafter he had entered the rest room and changed his clothes and when the security Asst. Shri Bhagat told him not to go out because the foreman had not permitted him to report for duties he slapped him on his right ear with his left hand. The above incidents had take place with in the depot premises. As per the instructions of the employer corporation workman is allowed to report for duties maximum 10 minutes late and if he reports beyond 10 minutes he can join duties if foreman permits him to do so. This position

has not been disputed by the workman. The workman had reported for duty about 30 minutes late on 21-6-94. The security Asst. Shri Bhagat who was on duty on that date was therefore within his right to question the workman about his late coming and enquire whether he was permitted by the foreman to join duties. The security Asst. Shri Bhagat thereafter had enquired with the foreman whether workman can be allowed to join the duties who told him to take action as per the instructions. Therefore the security Asst. Shri Bhagat was acting as per the instructions of the employer corporation when he told the workman that he cannot go out in dress to join the duties. Shri Bhagat was discharging his duties when the workman assaulted him, and the assault was without any provocation from Shri Bhagat, who was acting as per the instruction from the foreman. The above acts on the part of the workman are the serious acts and they are of grave indiscipline. In the case of Hindustan Petroleum Corp. Ltd., (supra) the employee had only tried to assault the customer of the employer and the Bombay High Court held that the employer was justified in discharging the employee from service. In the present case the workman had actually assaulted the Security Assistant Mr. Bhagat besides challenging his authority and that of the Security Assistant Mr. Gawas. The observations made by the Bombay High Court in the case of Municipal Corporation of Greater Bombay (supra) which have been quoted by me earlier squarely apply to the present case. In my view the misconduct committed by the workman is a serious one and it is an act subversive of discipline and good behaviour, for which lenient view cannot be taken. Considering all the above facts. I am of the view that the employer is justified in terminating the services of the workman and I do not find any reason to interfere with the punishment awarded to the workman. The indiscipline of the kind committed by the workman is to be viewed seriously, as otherwise, the same would affect the smooth functioning of the establishment and also affect the discipline amongst the workers as it would be presumed that even if one indulges in violent and indiscipline activities, the Court would come to his rescue and he would escape with some minor punishment. In the circumstances I hold that the action of the employer corporation in terminating the services of the workman is legal and justified. This being the case I hold that the workman has failed to prove that termination of his service by the employer w.e.f. 16-8-97 is illegal and unjustified, and hence I answer the issue No. 3 in the negative.

17. Issue No. 4: This issue pertains to the relief to which the workman is entitled to. While deciding the issue No. 3 it has been held by me that the action of the employer in terminating the services of the workman with effect from 16-8-1997 is legal and justified. In the circumstances the workman is not entitled to any relief. I therefore hold that the workman is not entitled to any relief and answer the issue No. 4 accordingly.

In the circumstances, I pass the following orders.

ORDER

It is hereby held that the action of the employer M/s. Kadamba Transport Corporation Limited, Panaji-Goa, in terminating the services of the Workman Shri Pradeep Simepuruskar, Helper Mechanic, with effect from 16-8-1997 is legal and justified. It is hereby further held that the Workman Shri Pradeep Simepuruskar is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 18-11-2004 in reference No. IT/75/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 9th December, 2004.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/75/2003

M/s. Mandovi Pellets Ltd.,
Near Borim Bridge,
Shiroda, Ponda-Goa. ... Employer/Party I

V/s

Mandovi Pellets Ltd.,
Employees Union,
Shiroda-Goa. Workmen/Party II

Employer/Party I represented by Adv. Shri G. K. Sardesai.

Workmen/Party II represented by Shri P. Gaonkar.

Panaji, dated 18-11-2004.

AWARD

In pursuance to the order dated 3-10-2003 passed by the Hon'ble High Court of Bombay at Goa, Panaji,

in Writ Petition No. 429/03, Government of Goa by order dated 19-11-2003 bearing No. 28/47/03-LAB referred the following dispute for adjudication of this Tribunal.

"Whether M/s. Mandovi Pellets Ltd., be granted permission to close down their undertaking at Shiroda, Ponda-Goa, in terms of their application dated 9-4-2003 under Section 25-O of the Industrial Disputes Act, 1947 (Central act, 14 of 1947)?

2. On receipt of the reference a case was registered under No. IT/75/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Employer/Party I (for short, "employer") filed its statement of claim at Exb. 5. The facts of the case in brief as pleaded by the employer are that it has a plant at Shiroda wherein 285 workers are employed and the employer is engaged in the business of manufacturing of pellets. That the iron ore required for manufacturing the pellets is of Higher grade and initially it was available from Goa only but gradually there was fall in availability of higher grade ore in Goa and therefore the employer had to rely upon the iron ore of the appropriate grade from places outside Goa namely Hospet and Bellary. That the landed cost of iron Hospet and Bellary is almost 165% of the landed cost of iron ore from Goa. That the steep increase in the administered price of fuel oil in 1979 and 1980, coupled with the failure of the Government of Goa to supply the contracted power of 20 MVA inspite of repeated requests in writing the cost of production per unit of operation escalated to commercially unviable levels as a result of which even though the plant was commissioned in the year September, 1979, it had to stop production in April 1981. That the plant remained closed till the year 1991 and with the indication of improvement in the demand of steel globally it was restarted in August, 1991. That still the plant could not run on smooth and continuous basis and the maximum production in any one year in the post 1991 era was hardly 7 lakh ton which is just about 1/3 of its rated capacity. That the main reasons for the same were high cost of inputs on account of high oil prices; high costs of inputs by way of iron ore brought from Hospet/Bellary; demand charges on electricity by Government of Goa, high water charges from Government of Goa; difficulty in raising loan to the extent of Rs. 44 crores to meet the requirement of working capital, etc.; repayment of existing loan to the extent of US \$ 16.5 million; and fluctuations in demand. That the plant is again shut down since June, 2002 and the accumulated loss was approximately 127 crores and that therefore the application dated 9-4-2003 was made to the Government of Goa u/s 25(o) of the Industrial Disputes Act, 1947 for permission to close the plant w.e.f., 8-7-2003. That the Government by order dated 6th May, 2003 rejected the application filed by the employer and against the said order a Writ Petition

was filed in the High Court of Bombay at Goa, Panaji and the Hon'ble High Court by consent order dated 25-9-2003 directed the Government to make the reference of the dispute to the Tribunal for adjudication. The employer stated that they are relying on the averments made in the application dated 9-4-2003 made to the Government for permission to close the establishment and prayed that all the said averments be treated as reproduced in the statement of claim. The employer prayed that appropriate orders be passed allowing the application of the employer dated 9-4-2003 seeking permission to close the establishment.

3. The Union/Party II (for short, "Union") filed written statement at Exb. 6 objecting to the application filed by the employer for permission to close down the plant. The union stated that the employer has entered into settlement dated 24-12-2003 with the union u/s 12(3) of the Industrial Disputes Act, 1947 for revision of wages and other service conditions for the period up to 31-3-2007 and the employer agreed to commence the plant from 15-1-2004 or latest by 29-2-2004 and as such the reference made by the Government does not survive. The Union stated that there was no increase in the production due to the mis-management and not on account of any fault on the part of the workers. The Union stated that vide letter dated 5-6-2003 the Chief Minister has assured the employer of reduction/ waiver of fixed charges levied on HT power consumer, concession in power tariff for a defined period, venture share capital, contribution subject to certain requirements, concessional water tariff and eligibility for employment subsidy. The union stated that the decision of the Government not to grant permission to close down the plant is legal and justified. The Union stated that the intention of the employer is to throw out the permanent workers and hand over the plant to some external party. The Union stated that in the year 2001-2002 the employer has invested more than 80 crores and up graded the plant including installation of new power plant to reduce the cost of production. The Union stated that the reasons for closure given by the employer are not beyond their control and as such the permission sought by the employer to close down the plant is liable to be rejected. Thereafter, the employer filed rejoinder at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 11 and thereafter the case was fixed for recording the evidence of the parties. Accordingly the employer led its evidence partly by examining one witness Mr. Pradeep Mahatme. When case was fixed for recording further evidence of the employer, the employer as well as the union filed an application dated 5-11-2004 at Exb. 21. In the said application the parties stated that in pursuance to the discussions between the management and the union for revocation of the suspension of the plant and restoration/commencement of the manufacturing process a settlement dated 24-12-2003 was arrived at between the parties. The parties stated that the manufacturing process has commenced at the plant

and presently manufacturing process is going on. The parties stated that though the accumulated losses and other conditions that prompted the employer to move the application for closure and invite of the subsequent reference, the employer with a view to create conducive atmosphere in the proper working of the plant and to ultimately make it economically viable, does not wish to pursue the reference at this stage. The parties stated that in the event the employer proposes to close the establishment then both the parties shall avail remedies under the law including a joint reference under the Industrial Disputes Act, 1947 with respect to the subject matter of closure. The employer and the union therefore stated that the reference does not survive and award be passed accordingly.

5. Since the parties themselves have submitted that in order to create conducive atmosphere for the proper working of the plant and to ultimately make it economically viable they do not wish to pursue the present reference, the dispute does not exist and consequently the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute between the parties does not exist pronounced in the open court.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 9-11-2004 in reference No. IT/82/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 9th December, 2004.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/82/2000

Shri Gajanan P. Gaonkar,

Shri Deu B. Gaonkar,

Shri Umesh M. Gaonkar,
Shri Sudesh P. Gaonkar,
Shri Sanju Gaonkar and
Shri Gurudas H. Gaonkar,
Rep. by Goa Trade & Commercial
Workers Union,
Velho's Building 2nd Floor,
Panaji-Goa. ... Workmen/Party I

v/s

M/s. Tough Seals Pvt. Ltd.,
Plot No. 25, Bethora Indl. Estate,
Bethora,
Ponda-Goa. Employer/Party II

Workmen/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. V. Nigalye.

Panaji, dated 9-11-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th November, 2000 bearing No. IRM/CON/PONDA/(275)/99/5689 referred the following dispute for adjudication by the Tribunal.

"Whether the action of the management of M/s. Tough Seals Pvt. Ltd., Bethora, Ponda-Goa, in terminating the services of six workmen, viz. S/Shri Gajanan P. Gaonkar, Shri Deu B. Gaonkar, Shri Umesh M. Gaonkar, Shri Sudesh P. Gaonkar, Shri Sanju Gaonkar and Shri Gurudas H. Gaonkar, with effect from 3-7-1999, is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/82/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearances. The Workman-Party I (for short, "Workmen") filed their statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workmen are that the Employer-Party II (for short, "Employer") is having a factory situated at Bethora Industrial Estate, Ponda Goa, and the workmen were employed in the said factory. That the employer made the workers to work beyond normal working hours but paid their wages at a very low rate. That the workers unionised themselves under the banner of Goa Trade & Commercial Workers Union. That the Union by letter dated 12-12-96 raised the demand on the management but the management refused to concede the said demands inspite of the repeated reminders by the union and the employer started adopting illegal and unfair labour practices in order to pressurise the workmen to leave the

membership of the union. That the workers were threatened that if they do not leave the membership of the union their services would be terminated. That the employer in order to harass the workers locked out its factory w.e.f., 1-2-97 and in the conciliation proceedings held by the Labour Commissioner a settlement was arrived at on 22-8-97. That the Dy. Labour Commissioner requested the employer to maintain cordial and harmonious relations with the workers and advised not to resort to any kind of unfair labour practice and the union also requested the employer to concede to the demands of the workers. That the employer continued with the adamant and rigid attitude of harassment and victimisation of the workers. That on 3-7-99 the employer refused employment to the workmen without assigning any justified reasons and without issuing to them any charge sheet or notice prior to the refusal of employment. The workmen contended that they have put in more than 14 years of continuous service with the employer and as such the refusal of employment was in violation of Sec. 25F of the Industrial Disputes Act, 1947. The workmen claimed that the termination of the service by the employer is illegal and unjustified and as such they are entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that the Union namely Goa Trade & Commercial Workers Union has no authority to raise the dispute on behalf of the workmen nor it has the authority to represent the workmen in the present reference. The employer stated that the establishment of the employer is closed w.e.f., 3-7-99. The employer stated that after its establishment was closed the union raised a dispute contending that the employer had effected lock out and ultimately at the instance of the Dy. Labour Commissioner a settlement u/s 12(3) of the Industrial Disputes Act, 1947 was signed between the parties and in terms of the said settlement it was agreed that the management would commence the operations w.e.f. 1-9-97. The employer stated that as per the settlement the establishment was re-opened from 1-9-97 and all the terms of the settlement were complied with but a section of the workers started disrupting the production as a result of which the quality of the manufactured product suffered and they also slowed down the production remained absent without intimation, abused the proprietor and indulged in other acts of indiscipline. The employer stated that due to the continuing indiscipline of the workers, the employer could not continue with the business and since there was no much improvement in the business, it was decided to close down the establishment and it was actually closed w.e.f., 1-7-99 which closure is final and irrevocable. The employer stated that by letters dated 30-6-99 the workers were informed that the establishment will be closed w.e.f., 1-7-99 and that their services stand terminated w.e.f., 3-7-99 due to closure. The employer stated that the dispute between the employer and the workers relates to

the closure of the establishment and not termination of service and since the reference is made in the matter of termination of service the reference is not maintainable. The employer denied that the workmen are entitled to any relief. The workmen thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for recording the evidence of the workman. At this stage the parties submitted that they are trying to arrived at an amicable settlement and at the request of the parties the case was fixed on 3-11-2004 for filing the terms of the settlement. Accordingly, on the said date the parties appeared and filed the terms of the settlement dated 3-11-2004 at Exb. 8. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submission made by the parties and pass the consent award in terms of the said settlement dated 3-11-2004 Exb. 8.

ORDER

1. The Workman/Party I have settled all their disputes with the Party II in view of the consent terms filed in the Hon'ble Industrial Tribunal Government of Goa in Re. No. IT/42/1999.
2. In view of the said consent terms filed in Ref. No. IT/42/1999, the disputes of the Party I with the Party II have been conclusively settled and the Party I have no claim or demand of whatsoever nature against Party II.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 9-11-2004 in reference No. IT/83/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 9th December, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/83/2000

Shri Devidas Priolkar,
Shri Sanju Gaonkar,
Shri Kamalakant Gaonkar,
Rep. by Goa Trade & Commercial
Workers Union,
Velho's Building 2nd Floor,
Panaji-Goa. Workmen/Party I

v/s

M/s. Tough Seals Pvt. Ltd.,
Plot No. 25, Bethora Indl. Estate,
Bethora,
Ponda-Goa. Employer/Party II

Workmen/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. V. Nigalye.

Panaji, dated 9-11-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th November, 2000 bearing No. IRM/CON/PONDA/(258)/99/5097 referred the following dispute for adjudication by the Tribunal.

"Whether the action of the management of M/s. Tough Seals Pvt. Ltd., in terminating the services of three workmen, namely S/Shri Devidas Priolkar, Sanju Gaonkar and Kamalakant Gaonkar, with effect from 16-3-1999, is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under case No. IT/83/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearances. The Workman/Party I (for short, "Workman") filed their statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workmen are that the Employer-Party II (for short, "Employer") is having a factory situated at Bethora Industrial Estate, Ponda, Goa, and the workmen were employed in the said factory. That the employer made the workers to work beyond normal working hours but paid their wages at a very low rate. That the workers unionised themselves under the banner of Goa Trade & Commercial Workers Union. That the Union by letter

dated 12-12-96 raised the demand on the management but the management refused to concede the said demands inspite of the repeated reminders by the union and the employer started adopting illegal and unfair labour practices in order to pressurise the workmen to leave the membership of the union. That the workers were threatened that if they do not leave the membership of the union their services would be terminated. That the employer in order to harass the workers locked out its factory w.e.f., 1-2-97 and in the conciliation proceedings held by the Labour Commissioner a settlement was arrived at on 22-8-97. That the Dy. Labour Commissioner requested the employer to maintain cordial and harmonious relations with the workers and advised not to resort to any kind of unfair labour practice and the union also requested the employer to concede to the demands of the workers. That the employer continued with the adamant and rigid attitude of harassment and victimisation of the workers. That on 16-3-99 the employer refused employment to the workmen without assigning any justified reasons and without issuing to them any charge sheet or notice prior to the refusal of employment. The workmen contended that they have put in more than 14 years of continuous service with the employer and as such the refusal of employment was in violation of Sec. 25F of the Industrial Disputes Act, 1947. The workmen claimed that the termination of the service by the employer is illegal and unjustified and as such they are entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the Union namely Goa Trade & Commercial Workers Union has no authority to raise the dispute on behalf of the workmen nor it has the authority to represent the workmen in the present reference. The employer stated that the establishment of the employer is closed w.e.f., 3-7-99. The employer stated that after its establishment was closed the union raised a dispute contending that the employer had effected lock out and ultimately at the instance of the Dy. Labour Commissioner a settlement u/s 12(3) of the Industrial Disputes Act, 1947 was signed between the parties and in terms of the said settlement it was agreed that the management would commence the operations w.e.f. 1-9-97. The employer stated that as per the settlement the establishment was re-opened from 1-9-97 and all the terms of the settlement were complied with but a section of the workers started disrupting the production as a result of which the quality of the manufactured product suffered and they also slowed down the production remained absent without intimation, abused the proprietor and indulged in other acts of indiscipline. The employer stated that on 17-3-99 letters were issued to the workmen in the present reference information them that they had absconded from work 16-3-99 and they were required to show cause as to why disciplinary action should not be taken against them. The employer stated that the workmen

therefore reported for work and their wages were also paid as such there was no termination of service of the workers w.e.f., 16-3-99 which is the date mentioned in the order of reference. The employer stated that due to the continuing indiscipline of the workers, the employer could not continue with the business and since the future prospects also looked bleak it was decided to close down the establishment and it was actually closed w.e.f., 1-7-99 which closure is final and irrevocable. The employer stated that by letters dated 30-6-99 the workers were informed that the establishment will be closed w.e.f., 1-7-99 and that their services stand terminated w.e.f., 3-7-99 due to closure. The employer stated that the dispute between the employer and the workers relates to the closure of the establishment and not termination of service and since the reference is made in the matter of termination of service the reference is not maintainable. The employer denied that the workmen are entitled to any relief. The workmen thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman. At the stage when the evidence of the workmen was partly recorded the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 3-11-2004 for filing the terms of the settlement. Accordingly, on the said date the parties appeared and filed the terms of the settlement dated 3-11-2004 at Exb. 11. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submission made by the parties and pass the consent award in terms of the said settlement dated 3-11-2004 Exb. 11.

ORDER

1. The Workmen/Party I have settled all their disputes with the Party II in view of the consent terms filed in the Hon'ble Industrial Tribunal Government of Goa in Re. No. IT/42/1999.
2. In view of the said consent terms filed in Ref. No. IT/42/1999, the disputes of the Party I with the Party II have been conclusively settled and the Party I have no claim or demand of whatsoever nature against Party II.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 24-11-2004 in reference No. IT/132/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 30th December, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/132/99

Shri Noel Michael, Rep. by
Goa Trade & Commercial
Workers Union,
Velho's Building 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

Mr. Atul Pai Kane,
Managing Director,
M/s Power Engineering Corporation,
Satyam, Pedem Road,
Mapusa-Goa.

.... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri G. K. Sardessai.

Panaji, dated 24-11-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12th November, 1999 bearing No. IRM/CON/(19)/99/5560 referred the following dispute for adjudication by the Tribunal.

"Whether the action of the management of M/s. Power Engineering corporation, in refusing employment to Shri Noel Michael, with effect from 21-1-1999, is legal and justified?

If not, to what relief the workman are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/132/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearances. The Workman/Party I (for short, "Workman") filed their statement of claim at Exb. 3. The facts of the case in brief as

pleaded by the workman are that he was employed as Fitter with the Employer/Party II (for short, "Employer") and was engaged in day to day production activities such as maintenance job, servicing of engines and alignment of generator set. That no proper service conditions were provided by the employer to the workmen and they made to work in hazardous conditions and they were not provided with proper rooms, drinking water facilities, lavatories, first aid treatment, hand gloves and shoes. That the workers of the employer unionised themselves and by resolution dated 13-10-1998 become a members of Goa Trade & Commercial Workers Union and the employer was informed about the same by letter dated 13-12-98. That soon after learning of the unionisation of the workers the employer started harassing and victimising the workers by adopting various illegal and unfair labour practice in order to pressurise the worker to leave the union. That on 27-1-1999 the workmen was refused employment by the employer and when he reported for work on the said date he was not allowed to enter the factory gate by the Security personnel. That a letter was written to the management but the same was refused to accept. That the workmen raised an industrial dispute by letter dated 8-2-99 before the Dy. Labour Commissioner, Panaji, in respect of refusal of employment to him. That the employer took a rigid and adamant stand in the conciliation proceedings and refrained from appearing before conciliation officer and therefore no settlement could be arrived at and failure report was submitted to the Government dated 21-9-99. The workmen contended that termination of his services by the employer is illegal and unjustified. The workman contended that the employer did not comply with the provisions of the Industrial Disputes Act, 1947 before terminating his services. The workmen contended that he was not issued any warning memo, show cause notice or charge sheet before refusing employment to him. The workman contended that termination of his service by the employer w.e.f. 21-1-99 is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that the dispute referred is not an industrial dispute and therefore the present reference is not maintainable. The employer denied that no proper service conditions were provided to the workers or that the workers were made to work in hazardous conditions or they were not provided with proper rest room, drinking water facilities, lavatories first aid treatment, hand gloves and shoes etc. The employer denied that a letter dated 13-12-98 was received from the workers informing the employer about their unionisation or about the resolution passed by the workers. The employer denied that its Managing Director started harassing and victimising the workers and adopted illegal and pressure tactics in order to compel the workers to leave the union. The employer stated that the

workman remained absent without prior intimation and the letter dated 24-12-98 sent to him by courier service on his available address was returned back with an endorsement, "Addressee not found". The employer state that the another letter dated 29-12-98 which was sent at the permanent address of the workmen at Calcutta, he was informed that his absence without leave or prior information amounts to misconduct as spelt out in the Model Standing Orders and therefore his services stand terminated with immediate effect and he was advised to collect his legal dues from the office on any working day. The employer denied that the workman had come to the factory gate on 27-1-99 and hence the question of Security personnel not permitting the workman to enter the gate did not arise. The employer stated that the services of the workmen were terminated on account of commission of misconduct i.e., long absence without intimation or leave. The employer stated that as there was no industrial disputes the Dy. Dy. Labour Commissioner did not have the jurisdiction to entertain the dispute. The employer denied that the termination of service of the workman is illegal and unjustified. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for recording the evidence of the workman. Accordingly, the workman led evidence and after his evidence was closed the case fixed for recording the evidence of the employer. At this stage the parties submitted that they are trying to arrive at a amicable settlement. Therefore at the request of the parties the case was fixed for filing the terms of settlement on 17-11-2004. According, on the said date it was submitted on behalf of the parties that the dispute between them has been amicable settled and the parties filed the terms of settlement dated 17-11-2004 at Exb. 9. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the terms of the settlement are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-11-2004 Exb. 9.

ORDER

1. It is agreed between the parties that the workman named in the schedule of reference namely Shri Noel Michael is to be treated to be retrenched w.e.f. 31-10-2004.
2. In view of the above, the employer/Party No. II has agreed to pay the workman, Shri Noel Michael named the following compensation.

- a) Gratuity @ 15 days salary for every completed year of service as on 31-10-2004.
- b) Retrenchment Compensation as per law.
- c) 43% back wages from 29-12-1998 to 31-10-2004.
- d) Unpaid leave salary due to the credit of the workmen.
- e) Unpaid salary for the month of December, 1998.
- f) In view of the above terms of the settlement, the workman named above shall be paid an amount of Rs. 1,62,887/- (Rupees one lakh sixty two thousand eight hundred eighty seven only) by cheque No. 0976145 dated 21-12-2004 for Rs. 81,000/- and cheque No. 0976146 dated 31-12-2004 for Rs. 81887/- drawn on Goa Urban Co-op. Bank Ltd., Mapusa Branch.

3. It is agreed between the parties that the employer/Party No. II shall assist the workman in claiming their Provident Fund dues from the Office of Provident fund Authorities by signing the valid from for withdrawal of the provident fund dues.
4. It is agreed between the parties that the Management shall issue a bonafide service certificate to the workman mentioning the correct date of joining.
5. It is agreed between the parties that the employer/Party II shall pay the amount to the workman as mentioned above on the date of filing of these settlement before this Hon'ble Court and the workman agrees to issue to valid receipt towards its acknowledgement.
6. It is agreed between the parties that the employer/Party II shall be deduct an amount of 10% at source from the total dues payable to the workman and agrees to pay the same to the Goa Trade & Commercial Workers' Union by a cheque on the date of signing of these settlement.
7. In view of the above terms, the workman agrees that their dispute stands conclusively settled and that they have no claim of whatsoever nature against the employer/Party II.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.